IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 26015 of 2006(V)

PETITIONER:

JOHN JOSEPH, PALAKKATTU HOUSE,
VALLIKKADU, VAZHIKADAVU P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS:

1. VAZHIKADAVU GRAMA PANCHAYATH,
VAZHIKADAVU P.O., MALAPPURAM DISTRICT,
REP. BY ITS SECRETARY.

2. THE SECRETARY,
VAZHIKADAVU GRAMA PANCHAYATH,
VAZHIKADAVU P.O., MALAPPURAM DISTRICT.

ADDL. 3. K.SUBRAMANIAN, S/O.UMMATHAN, H.NO.V.P.10/373D,
VALLIKKADAVU, VAZHIKADAVU PO., ERNAD TALUK,
MALAPPURAM

ADDL 4. PRASANNAN, S/O.MADHAVAN,
USHAMOOCHIKKAL, VAZHIKKADAVU PO.,
ERNAD TALUK, MALAPPURAM.

ADDL.RESPONDENTS 3 AND 4 IMPLEADED AS PER ORDER
DT.17.10.2006 IN I.A.14223/06

R3 & R4 BY ADV. SRI.SAJU.S.A
R1 & R2 BY ADV.SRI.JOHN JOSEPH VETTIKAD
SRI.SABU GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.26015 OF 2006

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DATED THIS THE 27TH NOVEMBER, 2006

J U D G M E N T

A resident of the 1st respondent-Vazhikadavu Grama Panchayat is aggrieved by the action of the Panchayat directing him to shut down his pig farm which, according to him, is his only means of livelihood. Ext.P1 is copy of the licence application submitted by the petitioner before the Panchayat for commencement of the pig farm. The petitioner has taken a ground that it is not necessary for him at all to seek a licence regarding commencement of the farm since no resolution has been passed by the 1st respondent-Panchayat in terms of the rules formulated by the Government under Section 254 of the Kerala Panchayat Raj Act. However, he concedes that the Panchayat may have power under the provisions of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 and it may be possible for the Panchayat to consider Ext.P1 application. Ext.P2 produced by the petitioner is the notice issued by the Panchayat directing the petitioner to close down the pig farm within 15 days. On receiving Ext.P2, the petitioner approached the Secretary of the Panchayat who insisted that the petitioner furnishes a letter requesting for six months' time for closing down the

pig farm. Though the petitioner was unwilling to furnish such a letter, upon insistence of the 1st respondent, he became compelled to furnish Ext.P3 letter seeking seven months' time for closing down the pig farm. Acting on Ext.P3, the Panchayat Committee decided to grant two months' time to the petitioner for shifting his pig farm and Ext.P4 is the letter of the Panchayat communicating that decision to him. Subsequently the time granted under Ext.P4 was further extended upto 5.10.2005 and Ext.P5 is copy of the resolution of the Panchayat in that regard. Ext.P6 is copy of notice dated 22.9.2006 issued by the Secretary of the Panchayat to the petitioner imposing fine on him under the provisions of the Panchayat Raj Act and the Rules relating to Issuance of Licence to Pigs and Dogs, demanding fine of Rs.50/- per day from 1.4.2006 onwards. Ext.P7 is another notice issued by the Panchayat informing the petitioner that the Panchayat will proceed to close down the farm. The petitioner understands that the Panchayat will implement Ext.P7 by demolishing the structures put up by him in the farm and by handing over all the pigs to the police. Questioning the jurisdiction of the Panchayat to issue a notice in the nature of Ext.P7 and seeking to quash Exts.P5, P6 and P7, the petitioner has raised several grounds and filed the Writ Petition.

2. Considering I.A.No.14223 of 2006, additional respondents 3

and 4 who are said to be aggrieved by the conduct of pig farm by the petitioner were impleaded.

3. A detailed counter affidavit has been filed by the Panchayat. Ext.R1(A) produced along with the counter affidavit is copy of a mass complaint signed by 65 persons against the conduct of pig farm by the petitioner. It is stated that pursuant to Ext.R1(A), a Sub-Committee consisting of the President, Vice President and the Chairpersons of the Development Committee and Welfare Committee and the concerned Ward Member along with Health Inspector of Public Health Centre, Vazhikadavu and Senior Veterinary Surgeon inspected the said premises and found that there is substance in the complaint. It was found that pigs were fed by chicken waste. The waste was seen kept without proper covering and taken by birds and put in the nearby wells, thereby polluting the drinking water source in the locality. The solid waste and waste water from the farm is not processed properly and surroundings are polluted The Sub-Committee also found that the pig farm is conducted in a most unhygienic manner. On the basis of the report of the Sub-Committee, the Panchayat Committee in its meeting held on 22.6.2006 decided to take action against the unauthorised pig farm. Ext.R1(B) is copy of the minutes of the Sub Committee. When notice was issued to the petitioner directing him to

close down the pig farm, he sought for some time for shifting the pig farm to a suitable place by submitting Ext.P3 letter. The petitioner's case regarding the circumstances under which Ext.P3 was issued is absolutely incorrect. Ext.R1(C) produced along with the counter affidavit is the resolution of the Panchayat deciding to grant two months' time from 17.7.2006 to the petitioner for shifting the pig farm. Violent agitations were started by the local public in front of the Panchayat Office even during the Panchayat Committee meetings alleging that the Panchayat is not discharging its statutory duty of abating the pollution and nuisance which is caused by the unauthorised pig farm. Ext.R1(D) is copy of the letter dated 22.9.2006 submitted by the petitioner to the Panchayat seeking time for removal of pig farm. It was considering Ext.R1(D) that the Panchayat adopted Ext.P5 resolution extending the time till 5.10.2006 for shifting the farm. The allegations of mala fides and personal vengeance behind the action of the Panchayat are stoutly denied and it is contended that the action of the Panchayat is in accordance with the provisions of law. Ext.R1(E) is copy of the resolution dated 17.10.2006 of the Panchayat by which the provisions of the Kerala Panchayat Raj (Licensing of Pigs and Dogs) Rules, 1998 have been made applicable to the Panchayat with effect from 18.10.2006. Wide publicity has been given to Ext.R1

(E) resolution as contemplated under sub-rules (2) and (3) of Rule 3 of the relevant rules. Ext.R1(F) is copy of the the pamphlet published by the Secretary in this regard. The petitioner is yet to take any licence. He submitted an application on 21.10.2006 which was not accompanied by vaccination certificate from the Veterinary Surgeon and sanitation certificate from the concerned Health Inspector. That application was rejected and the petitioner was intimated regarding rejection by Ext.R1(E) letter of the Panchayat. The present conduct of pig farm by the petitioner is per se illegal and the same has only to be stopped.

4. The additional 3rd respondent has filed a detailed counter affidavit, producing Exts.R3(a), Ext.R3(b), Ext.R3(c) and Ext.R3(d). Ext.R3(b) is copy of the certificate issued by the Health Inspector. Ext.R3(c) is the certificate issued by the Senior Veterinary Surgeon, Veterinary Hospital, Vazhikkadavu. Exts.R3(b) and R3(c) will support the case of the Panchayat. The additional 3rd respondent has also produced Ext.R3(d) which is copy of the letter submitted by one Haridas who was also conducting a pig farm stating that he has shut down the farm.

5. Having considered the elaborate submissions which were addressed before me by Sri.Deepu Thankan, learned counsel for the

petitioner, Sri.John Joseph Vettikkad, learned counsel for the Panchayat and Sri.S.A.Saju, learned counsel for the additional 3rd respondent in the light of various statutory provisions and the documents placed on record, I am of the view that the only relief which the petitioner can aspire for is the following, which I grant:-

> The order of stay presently passed will continue till 11.12.2006. The petitioner is directed to apply for licence afresh with necessary certificates from the Health Inspector. On receiving such application accompanied by the certificate issued by the Health Inspector, the Panchayat will take up the application and dispose of the same in accordance with law. If the decision of the Panchayat which is to be taken without delay comes to be in favour of the petitioner, Exts.P6 and P7 will be treated as withdrawn. If the order is against the petitioner, the Panchayat will do everything necessary for compelling the closure of the farm.

(PIUS C. KURIAKOSE, JUDGE)

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